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Introduction to the SRA Code of Conduct

Overview

Outcomes-focused regulation concentrates on providing positive outcomes which when achieved will benefit and protect *clients* and the public. The SRA Code of Conduct (the Code) sets out our outcomes-focused conduct requirements so that you can consider how best to achieve the right outcomes for your *clients* taking into account the way that your *firm* works and its *client* base. The Code is underpinned by effective, risk-based supervision and enforcement.

Those involved in providing legal advice and representation have long held the role of trusted adviser. There are fiduciary duties arising from this role and obligations owed to others, especially the *court*. No code can foresee or address every issue or ethical dilemma which may arise. You must strive to uphold the intention of the Code as well as its letter.

The Principles

The Code forms part of the Handbook, in which the 10 mandatory *Principles* are all-pervasive. They apply to all those we regulate and underpin all aspects of *practice*. They define the fundamental ethical and professional standards that we expect of all *firms* and individuals (including owners who may not be *lawyers*) when providing legal services. You should always have regard to the *Principles* and use them as your starting point when faced with an ethical dilemma.

Where two or more *Principles* come into conflict the one which takes precedence is the one which best serves the public interest in the particular circumstances, especially the public interest in the proper administration of justice. Compliance with the *Principles* is also subject to any overriding legal obligations.

You must:

1. uphold the rule of law and the proper administration of justice;
2. act with integrity;
3. not allow your independence to be compromised;
4. act in the best interests of each *client*;
5. provide a proper standard of service to your *clients*;
6. behave in a way that maintains the trust the public places in you and in the provision of legal services;
7. comply with your legal and regulatory obligations and deal with your regulators and ombudsmen in an open, timely and co-operative manner;
8. run your business or carry out your role in the business effectively and in accordance with proper governance and sound financial and risk management principles;
9. run your business or carry out your role in the business in a way that encourages equality of opportunity and respect for diversity; and
10. protect *client* money and *assets*.

Structure of the Code

The Code is divided into 5 sections:

- You and your client
- You and your business
- You and your regulator
- You and others
- Application, waivers and interpretation

Each section is divided into chapters dealing with particular regulatory issues, for example, client care, *conflicts of interests*, and *publicity*.

These chapters show how the *Principles* apply in certain contexts through mandatory and non-mandatory provisions.

Mandatory provisions

The following provisions are mandatory:

- the outcomes;
- the application and waivers provisions in Chapters 13 and 13A;
- the interpretations; and
- the transitional provisions in Chapter 15.

The outcomes describe what *firms* and individuals are expected to achieve in order to comply with the relevant *Principles* in the context of the relevant chapter. In the case of *in-house practice*, we have set out at the end of each chapter which outcomes apply and in some cases have specified different outcomes.

In respect of *in-house practice*, different outcomes may apply depending on whether you are acting for your employer or for a *client* other than your employer as permitted by rules 4.1 to 4.10 of the *SRA Practice Framework Rules*.

The outcomes contained in each chapter are not an exhaustive list of the application of all the *Principles*. We have tried to make them as helpful as possible.

Non-mandatory provisions

The following provisions are non-mandatory:

- indicative behaviours;
- notes.

The outcomes are supplemented by indicative behaviours. The indicative behaviours specify, but do not constitute an exhaustive list of, the kind of behaviour which may establish compliance with, or contravention of the *Principles*. These are not mandatory but they may help us to decide whether an outcome has been achieved in compliance with the *Principles*.

We recognise that there may be other ways of achieving the outcomes. Where you have chosen a different method from those we have described as indicative behaviours, we might require you to demonstrate how you have nevertheless achieved the outcome. We encourage *firms* to consider how they can best achieve the outcomes, taking into account the nature of the *firm*, the particular circumstances of the matter and, crucially, the needs of their particular *clients*.

Waivers

Due to the flexibility of approach this structure allows, we do not anticipate receiving many applications for waivers from the mandatory outcomes. The *SRA*, nonetheless, reserves power to waive a provision in exceptional circumstances.

Interpretation

Words shown in italics are defined in the *Glossary*.

Sources of help

You can access the Code and other elements of the Handbook and find information on particular issues on the *SRA* website. You can also seek guidance on professional conduct from our Professional Ethics Guidance Team.

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Preamble

The SRA Code of Conduct dated 17 June 2011 commencing 6 October 2011 made by the Solicitors Regulation Authority Board under sections 31, 79 and 80 of the Solicitors Act 1974, sections 9 and 9A of the Administration of Justice Act 1985 and section 83 of the Legal Services Act 2007, with the approval of the Legal Services Board under paragraph 19 of Schedule 4 to the Legal Services Act 2007, regulating the conduct of solicitors and their employees, registered European lawyers and their employees, registered foreign lawyers, recognised bodies and their managers and employees and licensed bodies and their managers and employees.

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1st Section: You and your client

Chapter 1: Client care

This chapter is about providing a proper standard of service, which takes into account the individual needs and circumstances of each *client*. This includes providing *clients* with the information they need to make informed decisions about the services they need, how these will be delivered and how much they will cost. This will enable you and your *client* to understand each other's expectations and responsibilities. This chapter is also about ensuring that if *clients* are not happy with the service they have received they know how to make a *complaint* and that all *complaints* are dealt with promptly and fairly.

Your relationship with your *client* is a contractual one which carries with it legal, as well as conduct, obligations. This chapter focuses on your obligations in conduct.

You are generally free to decide whether or not to accept instructions in any matter, provided you do not discriminate unlawfully (see Chapter 2).

The outcomes in this chapter show how the *Principles* apply in the context of client care.

Outcomes

You must achieve these outcomes:

- O(1.1)** you treat your *clients* fairly;
- O(1.2)** you provide services to your *clients* in a manner which protects their interests in their matter, subject to the proper administration of justice;
- O(1.3)** when deciding whether to act, or terminate your instructions, you comply with the law and the Code;
- O(1.4)** you have the resources, skills and procedures to carry out your *clients'* instructions;
- O(1.5)** the service you provide to *clients* is competent, delivered in a timely manner and takes account of your *clients'* needs and circumstances;
- O(1.6)** you only enter into fee agreements with your *clients* that are legal, and which you consider are suitable for the *client's* needs and take account of the *client's* best interests;
- O(1.7)** you inform *clients* whether and how the services you provide are regulated and how this affects the protections available to the *client*;
- O(1.8)** *clients* have the benefit of your *compulsory professional indemnity insurance* and you do not exclude or attempt to exclude liability below the minimum level of cover required by the *SRA Indemnity Insurance*

Rules;

- O(1.9)** *clients* are informed in writing at the outset of their matter of their right to complain and how *complaints* can be made;
- O(1.10)** *clients* are informed in writing, both at the time of engagement and at the conclusion of your *complaints* procedure, of their right to complain to the *Legal Ombudsman*, the time frame for doing so and full details of how to contact the *Legal Ombudsman*;
- O(1.11)** *clients' complaints* are dealt with promptly, fairly, openly and effectively;
- O(1.12)** *clients* are in a position to make informed decisions about the services they need, how their matter will be handled and the options available to them;
- O(1.13)** *clients* receive the best possible information, both at the time of engagement and when appropriate as their matter progresses, about the likely overall cost of their matter;
- O(1.14)** *clients* are informed of their right to challenge or complain about your bill and the circumstances in which they may be liable to pay interest on an unpaid bill;
- O(1.15)** you properly account to *clients* for any *financial benefit* you receive as a result of your instructions;
- O(1.16)** you inform current *clients* if you discover any act or omission which could give rise to a claim by them against you.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:

Dealing with the client's matter

- IB(1.1)** agreeing an appropriate level of service with your *client*, for example the type and frequency of communications;
- IB(1.2)** explaining your responsibilities and those of the *client*;
- IB(1.3)** ensuring that the *client* is told, in writing, the name and status of the person(s) dealing with the matter and the name and status of the person responsible for its overall supervision;
- IB(1.4)** explaining any arrangements, such as fee sharing or *referral arrangements*, which are relevant to the *client's* instructions;
- IB(1.5)** explaining any limitations or conditions on what you can do for the *client*, for example, because of the way the *client's* matter is funded;
- IB(1.6)** in taking instructions and during the course of the retainer, having proper regard to your *client's* mental capacity or other vulnerability, such as incapacity or duress;
- IB(1.7)** considering whether you should decline to act or cease to act because you cannot act in the *client's* best interests;
- IB(1.8)** if you seek to limit your liability to your *client* to a level above the minimum required by the *SRA Indemnity Insurance Rules*, ensuring that this limitation is in writing and is brought to the *client's* attention;
- IB(1.9)** refusing to act where your *client* proposes to make a gift of significant value to you or a member of your family, or a member of your *firm* or their family, unless the *client* takes independent legal advice;
- IB(1.10)** if you have to cease acting for a *client*, explaining to the *client* their possible options for pursuing their

matter;

IB(1.11) you inform *clients* if they are not entitled to the protections of the SRA Compensation Fund;

IB(1.12) considering whether a *conflict of interests* has arisen or whether the *client* should be advised to obtain independent advice where the *client* notifies you of their intention to make a claim or if you discover an act or omission which might give rise to a claim;

Fee arrangements with your client

IB(1.13) discussing whether the potential outcomes of the *client's* matter are likely to justify the expense or risk involved, including any risk of having to pay someone else's legal fees;

IB(1.14) clearly explaining your fees and if and when they are likely to change;

IB(1.15) warning about any other payments for which the *client* may be responsible;

IB(1.16) discussing how the *client* will pay, including whether public funding may be available, whether the *client* has insurance that might cover the fees, and whether the fees may be paid by someone else such as a trade union;

IB(1.17) where you are acting for a *client* under a fee arrangement governed by statute, such as a conditional fee agreement, giving the *client* all relevant information relating to that arrangement;

IB(1.18) where you are acting for a publicly funded *client*, explaining how their publicly funded status affects the costs;

IB(1.19) providing the information in a clear and accessible form which is appropriate to the needs and circumstances of the *client*;

IB(1.20) where you receive a *financial benefit* as a result of acting for a *client*, either:

(a) paying it to the *client*;

(b) offsetting it against your fees; or

(c) keeping it only where you can justify keeping it, you have told the *client* the amount of the benefit (or an approximation if you do not know the exact amount) and the *client* has agreed that you can keep it;

IB(1.21) ensuring that *disbursements* included in your bill reflect the actual amount spent or to be spent on behalf of the *client*;

Complaints handling

IB(1.22) having a written *complaints* procedure which:

(a) is brought to *clients'* attention at the outset of the matter;

(b) is easy for *clients* to use and understand, allowing for *complaints* to be made by any reasonable means;

(c) is responsive to the needs of individual *clients*, especially those who are vulnerable;

(d) enables *complaints* to be dealt with promptly and fairly, with decisions based on a sufficient investigation of the circumstances;

(e) provides for appropriate remedies; and

(f) does not involve any charges to *clients* for handling their *complaints*;

- IB(1.23)** providing the *client* with a copy of the *firm's complaints* procedure on request;
- IB(1.24)** in the event that a *client* makes a *complaint*, providing them with all necessary information concerning the handling of the *complaint*.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the *Principles*:

Accepting and refusing instructions

- IB(1.25)** acting for a *client* when instructions are given by someone else, or by only one *client* when you act jointly for others unless you are satisfied that the *person* providing the instructions has the authority to do so on behalf of all of the *clients*;
- IB(1.26)** ceasing to act for a *client* without good reason and without providing reasonable notice;
- IB(1.27)** entering into unlawful fee arrangements such as an unlawful contingency fee;
- IB(1.28)** acting for a *client* when there are reasonable grounds for believing that the instructions are affected by duress or undue influence without satisfying yourself that they represent the *client's* wishes.

In-house practice

Outcomes 1.1 to 1.5, 1.7, 1.15 and 1.16 apply to your *in-house practice*.

Outcomes 1.6 and 1.9 to 1.14 apply to your *in-house practice* where you act for someone other than your employer unless it is clear that the outcome is not relevant to your particular circumstances.

- IHP(1.1)** Instead of Outcome 1.8 you comply with the *SRA Practice Framework Rules* in relation to professional indemnity insurance.

Notes

- (i)** The information you give to *clients* will vary according to the needs and circumstances of the individual *client* and the type of work you are doing for them, for example an individual instructing you on a conveyancing matter is unlikely to need the same information as a sophisticated commercial *client* who instructs you on a regular basis.
- (ii)** Information about the *Legal Ombudsman*, including the scheme rules, contact details and time limits, can be found at www.legalombudsman.org.uk.

Chapter 2: Equality and diversity

This chapter is about encouraging equality of opportunity and respect for diversity, and preventing unlawful discrimination, in your relationship with your *clients* and others. The requirements apply in relation to age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

Everyone needs to contribute to compliance with these requirements, for example by treating each other, and *clients*, fairly and with respect, by embedding such values in the workplace and by challenging inappropriate behaviour and processes. Your role in embedding these values will vary depending on your role.

As a matter of general law you must comply with requirements set out in legislation - including the Equality Act 2010 - as well as the conduct duties contained in this chapter.

The outcomes in this chapter show how the *Principles* apply in the context of equality and diversity.

Outcomes

You must achieve these outcomes:

- O(2.1)** you do not discriminate unlawfully, or victimise or harass anyone, in the course of your professional dealings;
- O(2.2)** you provide services to *clients* in a way that respects diversity;
- O(2.3)** you make reasonable adjustments to ensure that disabled *clients*, *employees* or *managers* are not placed at a substantial disadvantage compared to those who are not disabled, and you do not pass on the costs of these adjustments to these disabled *clients*, *employees* or *managers*;
- O(2.4)** your approach to recruitment and employment encourages equality of opportunity and respect for diversity;
- O(2.5)** *complaints* of discrimination are dealt with promptly, fairly, openly, and effectively;
- O(2.6)** you have appropriate arrangements in place to ensure that you monitor, report and, where appropriate, publish workforce diversity data.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:

- IB(2.1)** having a written equality and diversity policy (which may be contained within one or more documents, including one or more policy documents, as appropriate) which is appropriate to the size and nature of the *firm* and includes the following features:
 - (a)** a commitment to the principles of equality and diversity and legislative requirements;
 - (b)** a requirement that all *employees* and *managers* comply with the outcomes;
 - (c)** provisions to encompass your recruitment and interview processes;
 - (d)** details of how the *firm* will implement, monitor, evaluate and update the policy;
 - (e)** details of how the *firm* will ensure equality in relation to the treatment of *employees*, *managers*, *clients* and third parties instructed in connection with *client* matters;
 - (f)** details of how *complaints* and disciplinary issues are to be dealt with;
 - (g)** details of the *firm's* arrangements for workforce diversity monitoring; and
 - (h)** details of how the *firm* will communicate the policy to *employees*, *managers* and *clients*;
- IB(2.2)** providing *employees* and *managers* with training and information about complying with equality and diversity requirements;
- IB(2.3)** monitoring and responding to issues identified by your policy and reviewing and updating your policy.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the *Principles*:

- IB(2.4)** being subject to any decision of a court or tribunal of the *UK*, that you have committed, or are to be treated as having committed, an unlawful act of discrimination;

IB(2.5) discriminating unlawfully when accepting or refusing instructions to act for a *client*.

In-house practice

Outcomes 2.1 and 2.2 apply to all *in-house practice*.

Instead of outcomes 2.3 to 2.5 you must achieve the following outcome:

IHP(2.1) if you have management responsibilities you take all reasonable steps to encourage equality of opportunity and respect for diversity in your workplace.

Notes

- (i) The obligations in this chapter closely mirror your legal obligations. You can obtain further information from the Equality and Human Rights Commission, www.equalityhumanrights.com.
- (ii) See also Chapter 1 (Client care) for the handling of *client complaints*.
- (iii) See also Chapter 7 (Management of your business) for your obligation to have in place appropriate systems and controls for complying with the outcomes in this chapter.
- (iv) For more information on collecting, reporting and publishing diversity data, including compliance with data protection legislation, please see guidance.

Chapter 3: Conflicts of interests

This chapter deals with the proper handling of *conflicts of interests*, which is a critical public protection. It is important to have in place systems that enable you to identify and deal with potential conflicts.

Conflicts of interests can arise between:

1. you and current *clients* ("*own interest conflict*"); and
2. two or more current *clients* ("*client conflict*").

You can never act where there is a conflict, or a significant risk of conflict, between you and your *client*.

If there is a conflict, or a significant risk of a conflict, between two or more current *clients*, you must not act for all or both of them unless the matter falls within the scope of the limited exceptions set out at Outcomes 3.6 or 3.7. In deciding whether to act in these limited circumstances, the overriding consideration will be the best interests of each of the *clients* concerned and, in particular, whether the benefits to the *clients* of you acting for all or both of the *clients* outweigh the risks.

You should also bear in mind that *conflicts of interests* may affect your duties of confidentiality and disclosure which are dealt with in Chapter 4.

The outcomes in this chapter show how the *Principles* apply in the context of *conflicts of interests*.

Outcomes

You must achieve these outcomes:

Systems

O(3.1) you have effective systems and controls in place to enable you to identify and assess potential *conflicts*

of interests;

O(3.2) your systems and controls for identifying *own interest conflicts* are appropriate to the size and complexity of the *firm* and the nature of the work undertaken, and enable you to assess all the relevant circumstances, including whether your ability as an individual, or that of anyone within your *firm*, to act in the best interests of the *client(s)*, is impaired by:

- (a) any financial interest;
- (b) a personal relationship;
- (c) the appointment of you, or a member of your *firm* or family, to public office;
- (d) commercial relationships; or
- (e) your employment;

O(3.3) your systems and controls for identifying *client conflicts* are appropriate to the size and complexity of the *firm* and the nature of the work undertaken, and enable you to assess all relevant circumstances, including whether:

- (a) the *clients'* interests are different;
- (b) your ability to give independent advice to the *clients* may be fettered;
- (c) there is a need to negotiate between the *clients*;
- (d) there is an imbalance in bargaining power between the *clients*; or
- (e) any *client* is vulnerable;

Prohibition on acting in conflict situations

O(3.4) you do not act if there is an *own interest conflict* or a significant risk of an *own interest conflict*;

O(3.5) you do not act if there is a *client conflict*, or a significant risk of a *client conflict*, unless the circumstances set out in Outcomes 3.6 or 3.7 apply;

Exceptions where you may act, with appropriate safeguards, where there is a client conflict

O(3.6) where there is a *client conflict* and the *clients* have a *substantially common interest* in relation to a matter or a particular aspect of it, you only act if:

- (a) you have explained the relevant issues and risks to the *clients* and you have a reasonable belief that they understand those issues and risks;
- (b) all the *clients* have given informed consent in writing to you acting;
- (c) you are satisfied that it is reasonable for you to act for all the *clients* and that it is in their best interests; and
- (d) you are satisfied that the benefits to the *clients* of you doing so outweigh the risks;

O(3.7) where there is a *client conflict* and the *clients* are *competing for the same objective*, you only act if:

- (a) you have explained the relevant issues and risks to the *clients* and you have a reasonable belief that they understand those issues and risks;
- (b) the *clients* have confirmed in writing that they want you to act, in the knowledge that you act, or may act, for one or more other *clients* who are *competing for the same objective*;

- (c) there is no other *client conflict* in relation to that matter;
- (d) unless the *clients* specifically agree, no individual acts for, or is responsible for the supervision of work done for, more than one of the *clients* in that matter; and
- (e) you are satisfied that it is reasonable for you to act for all the *clients* and that the benefits to the *clients* of you doing so outweigh the risks.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:

- IB(3.1)** training *employees* and *managers* to identify and assess potential *conflicts of interests*;
- IB(3.2)** declining to act for *clients* whose interests are in direct conflict, for example claimant and defendant in litigation;
- IB(3.3)** declining to act for *clients* where you may need to negotiate on matters of substance on their behalf, for example negotiating on price between a buyer and seller of a property;
- IB(3.4)** declining to act where there is unequal bargaining power between the *clients*, for example acting for a seller and buyer where a builder is selling to a non-commercial *client*;
- IB(3.5)** declining to act for *clients* under Outcome 3.6 (*substantially common interest*) or Outcome 3.7 (*competing for the same objective*) where the *clients* cannot be represented even-handedly, or will be prejudiced by lack of separate representation;
- IB(3.6)** acting for *clients* under Outcome 3.7 (*competing for the same objective*) only where the *clients* are sophisticated users of legal services;
- IB(3.7)** acting for *clients* who are the lender and borrower on the grant of a mortgage of land only where:
 - (a) the mortgage is a standard mortgage (i.e. one provided in the normal course of the lender's activities, where a significant part of the lender's activities consists of lending and the mortgage is on standard terms) of property to be used as the borrower's private residence;
 - (b) you are satisfied that it is reasonable and in the *clients'* best interests for you to act; and
 - (c) the certificate of title required by the lender is in the form approved by the *Society* and the Council of Mortgage Lenders.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the *Principles*:

- IB(3.8)** in a personal capacity, selling to or buying from, lending to or borrowing from a *client*, unless the *client* has obtained independent legal advice;
- IB(3.9)** advising a *client* to invest in a business, in which you have an interest which affects your ability to provide impartial advice;
- IB(3.10)** where you hold a power of attorney for a *client*, using that power to gain a benefit for yourself which in your professional capacity you would not have been prepared to allow to a third party;
- IB(3.11)** acting for two or more *clients* in a *conflict of interests* under Outcome 3.6 (*substantially common interest*) where the *clients'* interests in the end result are not the same, for example one partner buying out the interest of the other partner in their joint business or a seller transferring a property to a buyer;
- IB(3.12)** acting for two or more *clients* in a *conflict of interests* under Outcome 3.6 (*substantially common*

interest) where it is unreasonable to act because there is unequal bargaining power;

IB(3.13) acting for two buyers where there is a *conflict of interests* under Outcome 3.7 (*competing for the same objective*), for example where two buyers are competing for a residential property;

IB(3.14) acting for a buyer (including a lessee) and seller (including a lessor) in a transaction relating to the transfer of land for value, the grant or assignment of a lease or some other interest in land for value.

In-house practice

Outcomes 3.4 to 3.7 apply to your *in-house practice*.

Outcomes 3.1 to 3.3 apply if you have management responsibilities.

Chapter 4: Confidentiality and disclosure

This chapter is about the protection of *clients'* confidential information and the disclosure of material information to *clients*.

Protection of confidential information is a fundamental feature of your relationship with *clients*. It exists as a concept both as a matter of law and as a matter of conduct. This duty continues despite the end of the retainer and even after the death of the *client*.

It is important to distinguish the conduct duties from the concept of law known as legal professional privilege.

Bear in mind that all members of the *firm* or *in-house practice*, including support staff, consultants and locums, owe a duty of confidentiality to your *clients*.

The duty of confidentiality to all *clients* must be reconciled with the duty of disclosure to *clients*. This duty of disclosure is limited to information of which you are aware which is material to your *client's* matter. Where you cannot reconcile these two duties, then the protection of confidential information is paramount. You should not continue to act for a *client* for whom you cannot disclose material information, except in very limited circumstances, where safeguards are in place. Such situations often also give rise to a *conflict of interests* which is discussed in Chapter 3.

The outcomes in this chapter show how the *Principles* apply in the context of confidentiality and disclosure.

Outcomes

You must achieve these outcomes:

- O(4.1)** you keep the affairs of *clients* confidential unless disclosure is required or permitted by law or the *client* consents;
- O(4.2)** any individual who is advising a *client* makes that *client* aware of all information material to that retainer of which the individual has personal knowledge;
- O(4.3)** you ensure that where your duty of confidentiality to one *client* comes into conflict with your duty of disclosure to another *client*, your duty of confidentiality takes precedence;
- O(4.4)** you do not act for A in a matter where A has an interest adverse to B, and B is a *client* for whom you hold confidential information which is material to A in that matter, unless the confidential information can be protected by the use of safeguards, and:
 - (a)** you reasonably believe that A is aware of, and understands, the relevant issues and gives informed consent;
 - (b)** either:
 - (i)** B gives informed consent and you agree with B the safeguards to protect B's

information; or

(ii) where this is not possible, you put in place effective safeguards including information barriers which comply with the common law; and

(c) it is reasonable in all the circumstances to act for A with such safeguards in place;

O(4.5) you have effective systems and controls in place to enable you to identify risks to *client* confidentiality and to mitigate those risks.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:

IB(4.1) your systems and controls for identifying risks to *client* confidentiality are appropriate to the size and complexity of the *firm* or *in-house practice* and the nature of the work undertaken, and enable you to assess all the relevant circumstances;

IB(4.2) you comply with the law in respect of your fiduciary duties in relation to confidentiality and disclosure;

IB(4.3) you only outsource services when you are satisfied that the provider has taken all appropriate steps to ensure that your *clients'* confidential information will be protected;

IB(4.4) where you are an individual who has responsibility for acting for a *client* or supervising a *client's* matter, you disclose to the *client* all information material to the *client's* matter of which you are personally aware, except when:

(a) the *client* gives specific informed consent to non-disclosure or a different standard of disclosure arises;

(b) there is evidence that serious physical or mental injury will be caused to a person(s) if the information is disclosed to the *client*;

(c) legal restrictions effectively prohibit you from passing the information to the *client*, such as the provisions in the money-laundering and anti-terrorism legislation;

(d) it is obvious that privileged documents have been mistakenly disclosed to you;

(e) you come into possession of information relating to state security or intelligence matters to which the Official Secrets Act 1989 applies;

IB(4.5) not acting for A where B is a *client* for whom you hold confidential information which is material to A unless the confidential information can be protected.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the *Principles*:

IB(4.6) disclosing the content of a will on the death of a *client* unless consent has been provided by the personal representatives for the content to be released;

IB(4.7) disclosing details of bills sent to *clients* to third parties, such as debt factoring companies in relation to the collection of book debts, unless the *client* has consented.

In-house practice

The outcomes listed above apply to your *in-house practice*.

Notes

- (i) The protection of confidential information may be at particular risk where:
 - (a) two or more *firms* merge;
 - (b) when you leave one *firm* and join another, such as if you join a *firm* acting against one of your former *clients*.
- (ii) The following circumstances may make it difficult to implement effective safeguards and information barriers:
 - (a) you are a small *firm*;
 - (b) the physical structure or layout of the *firm* means that it will be difficult to preserve confidentiality; or
 - (c) the *clients* are not sophisticated users of legal services.

Chapter 5: Your client and the court

This chapter is about your duties to your *client* and to the *court* if you are exercising a right to conduct litigation or acting as an advocate. The outcomes apply to both litigation and advocacy but there are some indicative behaviours which may be relevant only when you are acting as an advocate.

The outcomes in this chapter show how the *Principles* apply in the context of your *client* and the *court*.

Outcomes

You must achieve these outcomes:

- O(5.1)** you do not attempt to deceive or knowingly or recklessly mislead the *court*;
- O(5.2)** you are not complicit in another *person* deceiving or misleading the *court*;
- O(5.3)** you comply with *court* orders which place obligations on you;
- O(5.4)** you do not place yourself in contempt of *court*;
- O(5.5)** where relevant, *clients* are informed of the circumstances in which your duties to the *court* outweigh your obligations to your *client*;
- O(5.6)** you comply with your duties to the *court*;
- O(5.7)** you ensure that evidence relating to sensitive issues is not misused;
- O(5.8)** you do not make or offer to make payments to witnesses dependent upon their evidence or the outcome of the case.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:

- IB(5.1)** advising your *clients* to comply with *court* orders made against them, and advising them of the consequences of failing to comply;

- IB(5.2)** drawing the *court's* attention to relevant cases and statutory provisions, and any material procedural irregularity;
- IB(5.3)** ensuring child witness evidence is kept securely and not released to *clients* or third parties;
- IB(5.4)** immediately informing the *court*, with your *client's* consent, if during the course of proceedings you become aware that you have inadvertently misled the *court*, or ceasing to act if the *client* does not consent to you informing the *court*;
- IB(5.5)** refusing to continue acting for a *client* if you become aware they have committed perjury or misled the *court*, or attempted to mislead the *court*, in any material matter unless the *client* agrees to disclose the truth to the *court*;
- IB(5.6)** not appearing as an advocate, or acting in litigation, if it is clear that you, or anyone within your *firm*, will be called as a witness in the matter unless you are satisfied that this will not prejudice your independence as an advocate, or litigator, or the interests of your *clients* or the interests of justice.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the *Principles*:

- IB(5.7)** constructing facts supporting your *client's* case or drafting any documents relating to any proceedings containing:
 - (a)** any contention which you do not consider to be properly arguable; or
 - (b)** any allegation of fraud, unless you are instructed to do so and you have material which you reasonably believe shows, on the face of it, a case of fraud;
- IB(5.8)** suggesting that any *person* is guilty of a crime, fraud or misconduct unless such allegations:
 - (a)** go to a matter in issue which is material to your own *client's* case; and
 - (b)** appear to you to be supported by reasonable grounds;
- IB(5.9)** calling a witness whose evidence you know is untrue;
- IB(5.10)** attempting to influence a witness, when taking a statement from that witness, with regard to the contents of their statement;
- IB(5.11)** tampering with evidence or seeking to persuade a witness to change their evidence;
- IB(5.12)** when acting as an advocate, naming in open *court* any third party whose character would thereby be called into question, unless it is necessary for the proper conduct of the case;
- IB(5.13)** when acting as an advocate, calling into question the character of a witness you have cross-examined unless the witness has had the opportunity to answer the allegations during cross-examination.

In-house practice

The outcomes in this chapter apply to your *in-house practice*.

Notes

- (i)** If you are a litigator or an advocate there may be occasions when your obligation to act in the best interests of a *client* may conflict with your duty to the *court*. In such situations you may need to consider whether the public interest is best served by the proper administration of justice and should take precedence over the interests of your *client*.

Chapter 6: Your client and introductions to third parties

There may be circumstances in which you wish to refer your *clients* to third parties, perhaps to another *lawyer* or a financial services provider. This chapter describes the conduct duties which arise in respect of such introductions. It is important that you retain your independence when recommending third parties to your *client* and that you act in the *client's* best interests.

The outcomes in this chapter show how the *Principles* apply in the context of your *client* and introductions to third parties.

Outcomes

You must achieve these outcomes:

- O(6.1)** whenever you recommend that a *client* uses a particular *person* or business, your recommendation is in the best interests of the *client* and does not compromise your independence;
- O(6.2)** *clients* are fully informed of any financial or other interest which you have in referring the *client* to another *person* or business;
- O(6.3)** *clients* are in a position to make informed decisions about how to pursue their matter;
- O(6.4)** you are not *paid a prohibited referral fee*.

Indicative behaviours

Acting in the following way(s) may tend to show that you have achieved these outcomes and therefore complied with the *Principles*:

- IB(6.1)** any *arrangement* you enter into in respect of *regulated mortgage contracts*, *regulated credit agreements*, *general insurance contracts* (including after the event insurance) or *pure protection contracts*, provides that referrals will only be made where this is in the best interests of the particular *client* and the contract or agreement is suitable for the needs of that *client*;
- IB(6.2)** any referral to a third party that can only offer products from one source is made only after the *client* has been informed of this limitation;
- IB(6.3)** having effective systems in place for assessing whether any *arrangement* complies with the statutory and regulatory requirements;
- IB(6.4)** retaining records and management information to enable you to demonstrate that any *payments* you receive are not *prohibited referral fees*.

Acting in the following way(s) may tend to show that you have not achieved these outcomes and therefore not complied with the *Principles*:

- IB(6.5)** entering into any *arrangement* which restricts your freedom to recommend any particular business, except in respect of *regulated mortgage contracts*, *general insurance contracts* or *pure protection contracts*;
- IB(6.6)** being an *appointed representative*.

In-house practice

The outcomes in this chapter apply to your *in-house practice*.

Notes

- (i) See Outcome 1.15, in relation to *financial benefits* that you may receive in respect of introductions to third parties.
- (ii) If the introduction is in connection with the provision of financial services, and your *firm* is not authorised by the Financial Conduct Authority, you will need to comply with the SRA Financial Services (Scope) Rules 2001 and the SRA Financial Services (Conduct of Business) Rules 2001. Where an introduction is not a *regulated activity* because you can rely on an exclusion in the *Regulated Activities Order*, you will need nevertheless to consider Outcome 1.15.
- (iii) This chapter should be read in conjunction with Chapter 12 (Separate businesses).

